

Message Text

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E.O. 11652: N/A
TAGS: EINV, EC
SUBJECT: THE TREATMENT OF FOREIGN INVESTMENT IN ECUADOR -
TECHNOLOGY TRANSFER

REF: STATE 06843

1. COMATT DISCUSSED THE SUBJECT OF TECHNOLOGY TRANSFER IN GENERAL AND THE QUESTIONS POSED IN REFTEL IN PARTICULAR WITH DR. CARLOS ANDRADE DIRECTOR OF THE FOREIGN INVESTMENT DEPARTMENT AND THE AUTHORITY ON THE SUBJECT WITHIN THE MINISTRY OF INDUSTRY, COMMERCE AND INTEGRATION(MICEI).

2. THE LACK OF CLARITY IN ECUADOR'S TREATMENT OF IMPORTED TECHNOLOGY STEMS FROM WHAT DR. ANDRADE TERMED THE "LEGAL VACUUM" THAT HAS EXISTED SINCE 1971, WHEN ANDEAN PACT DECISION 24 CAME INTO EFFECT. WHILE RESPONSIBLE ORGANIZATIONS WERE SET UP HERE AT AN EARLY STAGE TO DEAL WITH FOREIGN CAPITAL INVESTMENT IN ACCORDANCE WITH RELEVANT ANDEAN PACT REGULATIONS, IT WAS ONLY IN NOVEMBER 1976 THAT THE INTER-MINISTERIAL COMMITTEE ON THE TRANSFER OF TECHNOLOGY WAS CREATED AND AUTHORIZED TO PUT ECUADOREAN TREATMENT OF TECHNOLOGY IMPORTS IN CONSONANCE WITH DECISION 24 AND THE LATER RESOLUTION 303.

3. DUE TO THIS LEGAL VACUUM IT HAS OFTEN BEEN DIFFICULT TO GET ANY KIND OF DEFINITIVE RULING FROM THE GOE
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REGARDING A SPECIFIC PROPOSED LICENSING AGREEMENT. THIS LED TO THE IMPRESSION THAT NEW ROYALTY AGREEMENTS WERE NO LONGER PERMITTED, WHICH ACCORDING TO DR. ANDRADE IS NOT TRUE.

4. ANDRADE SAID THAT SOME OF THE AMBIGUITY WILL BE CLEARED UP WHEN A NEW DECREE-LAW IS PUBLISHED, PROBABLY

AT THE END OF MAY. THE LAW WILL SPECIFY THE FOLLOWING LIMITS ON THE ROYALTIES THAT CAN BE PAID BY LOCAL FIRMS: IN THE CASE OF TRADEMARKS IT IS 3 PERCENT OF NET SALES; FOR PATENTS, 5 PERCENT OF NET SALES; AND FOR TECHNICAL ASSISTANCE (INDUSTRIAL PROCESSES, ETC.), 7 PERCENT. WITHIN THESE GENERAL LIMITATIONS, THE INTER-MINISTERIAL COMMITTEE ON TECHNOLOGY TRANSFER WILL DECIDE THE PRECISE RATE TO BE PERMITTED, ON A CASE-BY-CASE BASIS.

5. THE ANALYSIS OF NEW ROYALTY AGREEMENTS WILL BE BOTH LEGAL AND ECONOMIC IN NATURE. IN ADDITION, THE LAW WILL SPECIFY THAT EXISTING ROYALTY AGREEMENTS BE SUBJTQO TO A LEGAL EXAMINATION WHEN THEY EXPIRE AND BEFORE THEY ARE RENEWED, AGAIN ON A CASE-BY-CASE-BASIS.

6. ON THE QUESTION OF A ONE-TIME PURCHASE OF TECHNOLOGY, ANDRADE SAID THAT HE HAD YET TO DEAL WITH SUCH A CASE AND WAS NOT SURE HOW IT WOULD BE HANDLED BY THE INTER-MINISTERIAL COMMITTEE.

7. ANDRADE SAID THAT THE COMMITTEE IS CURRENTLY RECEIVING ASSISTANCE FROM VENEZUELAN SPECIALISTS IN TECHNOLOGY TRANSFER, AND THAT HELP FROM OTHER SOURCES IS ALSO BEING SOUGHT TO FURTHER STANDIZE ECUADOREAN TREATMENT OF TECHNOLOGY IMPORTS.
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